

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6307

PETITION OF ROBERT C. WILKOFF
(Hearing held December 16, 2009)

OPINION OF THE BOARD
(Effective date of Opinion, January 15, 2010)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(1). The petitioner proposes the construction of a one-story addition that requires a two (2) foot variance as it is within five (5) feet of the side lot line. The required side lot line setback is seven (7) feet.

Martha Wilkoff, the petitioner's wife, appeared with the petitioner at the public hearing.

The subject property is Lot 1B, located at 7503 MacArthur Boulevard, Cabin John, Maryland, 20818, in the R-90 Zone (Tax Account No. 01879192).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 20 x 25.3½ foot one-story addition.
2. The petitioners testified that they purchased the property in 1979. The petitioner testified that the original property was subdivided in the 1950s and divided into three individual lots, Lots 1A, 1B, and 1C. The petitioners testified that their lot is 1B and that it is a small, narrow lot. The petitioners testified that the design of their house is unusual because it was built around a large sycamore tree located in the center of the lot. The petitioners testified that the front of lot follows the curve of MacArthur Boulevard and that the front of the lot is at an angle. See Exhibit Nos. 12 [rendered site plan], 9 [zoning vicinity map].

3. The petitioners testified that their lot is 68 feet in width and 8,667 square feet in size. The petitioners testified that the subject property is substandard for the R-90 Zone in its size and its width. The petitioners testified that the average lot size for their neighborhood is 12,900 square feet and that the standard lot width for the zone is 75 feet. The petitioners testified that their lot is the smallest lot in their block and that their lot is substantially smaller than most of the lots on the north side of MacArthur Boulevard.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the subject property is a small, narrow lot. The Board finds that the petitioners' lot is substandard for the R-90 in its size and width and that their lot is substantially smaller than most properties in the immediate neighborhood. The Board finds that these are exceptional conditions peculiar to the subject property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a one-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the requested variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of two (2) feet from the required seven (7) foot side lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4, 5(a) through 5(g), and 12.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board members Walter S. Booth and Carolyn J. Shawaker were necessarily absent and did not participate in this Resolution. On a motion by Stanley B. Boyd, seconded by Catherine G. Titus, Chair, with David K. Perdue, in agreement, the Board adopted the foregoing Resolution.

Catherine G. Titus
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 15th day of January, 2010.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.